TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 245.

BARBARA CHAVES DE ARAUJO, APPELLANT,

vs.

JESUS M. ARAUJO.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

FILED JUNE 4, 1900.

(17,706.)

24936

(17,706.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 243.

BARBARA CHAVEZ DE ARMIJO, APPELLANT,

vs.

JUSTO R. ARMIJO.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from district court	2	1
Declaration	3	1
Bill of particulars	5	2
Pleas	6	3
Replications	8	4
Motion for reference	9	5
Order referring cause to referee	9	5
Referee's report	10	6
Testimony (omitted in printing)	17	10
Testimony closed	184	10*a*
Exceptions to referee's report	185	10*a*
Judgment	186	10*b*
Bond on appeal	188	10*c*
Motion for entry of order granting appeal	190	10*d*
Order denying motion for order granting appeal	192	10*f*
Writ of error	192	10*f*
Præcipe for transcript	193	10*g*
Clerk's certificate	194	10*h*
Judge's certificate as to bill of exceptions	195	11

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 1, 1900.

	Original	Print
Assignment of errors	196	11
Notice of motion to affirm judgment	197	12
Motion to affirm judgment	198	13
Order taking motions under advisement	200	14
Judgment	201	15
Motion for rehearing	202	15
Order overruling motion for rehearing	204	17
Motion for appeal	205	17
Order granting appeal, &c	206	18
Bond	206	18
Statement of facts and exception thereto	208	19
Clerk's certificate	209	20
Citation and service	210	20
Assignment of errors	211	21

1 Be it remembered that heretofore, on the fourteenth day of December, A. D. 1899, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a transcript of record; which said transcript of record is in words and figures as follows, to wit:

2 In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1900.

BARBARA CHAVEZ DE ARMIJO, Plaintiff in Error,
vs.
JUSTO R. ARMIJO, Defendant in Error. } No. 840.

Error to district court, Bernalillo county.

Filed in my office this Nov. 21, 1899. JOSE D. SENA, *Clerk.*

WARREN & FERGUSSON,
WARREN & CHAVEZ,
Attorneys for Plaintiff in Error.

Filed in my office this Dec. 14, 1899. JOSE D. SENA, *Clerk.*

3 Be it remembered that heretofore, to wit, on the 13th day of February, 1897, there was filed in the office of the clerk of the district court of the second judicial district of the Territory of New Mexico within and for the county of Bernalillo plaintiff's declaration; which said declaration is in words and figures following, to wit:

TERRITORY OF NEW MEXICO, }
Bernalillo County. }

In the District Court, Second Judicial District of the Territory of New Mexico, Sitting within and for the County of Bernalillo, in said District, for the Trial of Causes Arising under the Laws of said Territory, at the March Term, A. D. 1897.

To the Honorable Needham C. Collier, associate justice of the supreme court *in* the Territory of New Mexico and judge of the second judicial district court thereof:

Your petitioner, Justo R. Armijo, a resident of the county of Bernalillo and Territory of New Mexico, complains of Barbara Chavez de Armijo, who is likewise a resident of the same county and Territory, in an action of assumpsit, for that whereas heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and ninety-seven, at, to wit, the county of Bernalillo aforesaid, the said defendant was justly indebted to the plaintiff in the sum of $9,434.44 for the work and labor, care and diligence, of the said plaintiff by the said plaintiff before that time

done, performed, and bestowed in and about the business of
4 said defendant and for the said defendant and at her special instance and request, and in the further sum of $9,434.44 for interest accrued upon divers sums of money before that time due and owing from the said defendant to the said plaintiff and by the said plaintiff to the said defendant forborne for long spaces of time at the special instance and request of the said defendant, and in the further sum of $9,434.44 for money by the said plaintiff lent to the said defendant at her special instance and request, and in the further sum of $9,434.44 for money by the said plaintiff advanced to and paid, laid out, and expended for the said defendant at her like special instance and request, and in the further sum of $9,434.44 for money of the said plaintiff before that time had and received by the said defendant; and, being so indebted, she, the said defendant, then and there faithfully promised the said plaintiff to pay him the said several sums of money when she, the said defendant, should be thereunto afterwards requested.

And for that whereas the said defendant heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and ninety-seven, the said defendant accounted with the said plaintiff of and concerning divers other sums of money from the said defendant to the said plaintiff then and there due and owing and then in arrears and unpaid, and upon such accounting the said defendant was then and there found to be in arrear and indebted to the said plaintiff in the further sum of $9,434.44 of like lawful money, and, being so found in arrear and indebted, she, the said defendant, undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money when she should be afterwards thereunto requested.

5 And the said defendant, not regarding her several promises and undertakings, hath not as yet paid the said several sums of money, any or either of them or any part thereof, though often requested so to do, but to pay him the same has hitherto neglected and refused and so doth neglect and refuse, to the damage of the said plaintiff in the sum of $10,000.

Plaintiff files herewith and makes a part of this declaration a bill of particulars of his said claims and makes the same Exhibit "A." Wherefore plaintiff brings this suit and prays judgment against the said defendant for said sum of $10,000, his damages, together with interest and costs of suit.

NEILL B. FIELD,
Attorney for Plaintiff.

Barbar- Chavez de Armijo to J. R. Armijo, Dr.

1897.		
Jan. 1.	To 5 years service as manager, at $2,500 a year..	$12,500.00
	To balance due me, as per manifest in your possession, for moneys advanced.....	3,717.65
	To interest on monthly balances of cash.....	290.12
		$16,507.77

CR.

By my note held by you, dated July 11, 1892.....	$6,000.00	
By interest on same, 4 yrs. 5 mos. and 20 days, at 4 per cent. per annum..	1,073	
		$7,073.33
Balance		$9,434.44

(Endorsed: Filed in my office this Feb. 13, 1897. O. N. Marron, clerk.)

6 And thereafter, on, to wit, the 4th day of March, 1897, there was filed in the office of the clerk of said court in said cause defendant's pleas; which said pleas are in words and figures following, to wit:

TERRITORY OF NEW MEXICO,
County of Bernalillo.

In the Second Judicial District Court.

JUSTO R. ARMIJO
vs.
BARBARA CHAVEZ DE ARMIJO. } No. 4728.

Now comes the defendant, Barbara Chavez de Armijo, by Warren, Fergusson and Gillett, her attorneys, and defends the wrong and injury, when, etc., and says that she did not promise or undertake in manner and form as the said plaintiff hath above thereof complained against her; and of this she puts herself upon the country.

WARREN, FERGUSSON & GILLETT,
Attorneys for Defendant.

TERRITORY OF NEW MEXICO,
County of Bernalillo.

In the Second Judicial District Court.

JUSTO R. ARMIJO
vs.
BARBARA CHAVEZ DE ARMIJO. } No. 4728.

And for a further plea in this behalf the said defendant says that the said plaintiff ought not to have or maintain his aforesaid action against her, the said defendant, because she says that the said plaintiff, before and at the time of the commencement of this suit, to wit, at the county of Bernalillo aforesaid, was and still is indebted to the said defendant in a large sum of money, to wit, the sum of fourteen thousand ($14,000) dollars, for work and labor, care and diligence, of the said defendant by the said defendant before that time done, performed, and bestowed in and about the business of the said plaintiff and for the said plaintiff and at his request,

and for divers materials and other necessary things by
7 the said defendant before that time found and provided and used and applied in and about the said work and labor for the said plaintiff and at his like request, and for divers goods, wares, and merchandise sold and delivered by the said defendant to the *the* said plaintiff at his like request, and for money by the said defendant before that time lent and advanced to, paid, laid out, and expended for the said plaintiff and at his like request, and for money by the said plaintiff before that time had and received to and for the use of the said defendant, and for money due and owing from the said plaintiff for interest upon and for the forbearances of divers sums of money due and owing from the said plaintiff to the said defendant and by the said defendant foreborne to the said plaintiff for divers long spaces of time before then elapsed, and for money due and owing from the said plaintiff to the said defendant upon an account stated between them; which said sums of money so due and owing to the said defendant, as aforesaid, exceeds the damages sustained by the said plaintiff by reason of non-performance by the said defendant of the said several supposed promises and undertakings in said declaration mentioned, and out of which said sums of money so due and owing from the said plaintiff to the said defendant the said defendant is ready and willing and hereby offers to set off and allow to the said plaintiff the full amount of damages, according to the form of statute in such case made and provided; and this the defendant is ready to verify. Wherefore she prays judgment whether the said plaintiff ought to have or maintain his aforesaid action against her, the said defendant.

WARREN, FERGUSSON & GILLETT,
Attorneys for Defendant.

8 (Endorsed: Filed in my office this Mar. 4, 1897. O. N. Marron, clerk.)

And thereafter, on, to wit, the 5th day of March, 1897, there was filed in the office of the clerk of said court in said cause plaintiff's replications; which said replications are in words and figures following, to wit:

TERRITORY OF NEW MEXICO:

Bernalillo District Court, March Term, 1897.

JUSTO R. ARMIJO
vs.
BARBARA CHAVEZ DE ARMIJO. } No. 4728.

And the said plaintiff, as to the plea of the said defendant by her firstly above pleaded and of which she hath put herself upon the country, doth the like.

NEILL B. FIELD,
Attorney for Plaintiff.

And the said plaintiff, as to the plea of the said defendant by her secondly above pleaded, says that he did not undertake or promise in manner and form as the said defendant hath above thereof complained against him; and this the said plaintiff prays may be inquired of by the country.

NEILL B. FIELD,
Attorney for Plaintiff.

(Endorsed: Filed in my office this Mar. 5, 1897. O. N. Marron, clerk.)

And thereafter, on, to wit, the 20th day of April, 1898, there was filed in the office of the clerk of said court in said cause motion for reference; which said motion is in words and figures following, to wit:

TERRITORY OF NEW MEXICO,
County of Bernalillo.

In Second Judicial District Court.

9 JUSTO ARMIJO
vs.
BARBARA CHAVEZ DE ARMIJO. } No. 4728.

Now comes the defendant herein, by Warren, Fergusson and Gillette, her attorneys, and asks that the court refer this cause to a referee, and for grounds of this motion show- here to the court the following:

First. That it is apparent from the pleadings and motions in this cause that the matters involved in this cause will necessitate the examination of long and voluminous book accounts.

Second. That this is a proper case in which to make a reference to a referee.

Third. That under the code in force in this Territory the defendant is entitled to have this case referred to a referee.

And for many other good and sufficient reasons.

WARREN, FERGUSSON & GILLETT,
Attorneys for Defendant.

(Endorsed: Filed in my office this Apr. 20, 1898. Harry P. Owen, clerk.)

And thereafter, at a regular term of the district court of the second judicial district of the Territory of New Mexico, begun and held within and for the county of Bernalillo, on the thirty-ninth day of said term, the same being the 20th day of April, A. D. 1898, the following, among other, proceedings were had and entered of record:

Present: The Honorable Jonathan W. Crumpacker, associate justice of the supreme court of the Territory of New Mexico and judge of the second judicial district court thereof.

JUSTO R. ARMIJO
vs.
BARBARA CHAVEZ DE ARMIJO. } No. 4728.

10 This cause is this day heard upon defendant's motion for a reference of this cause to a referee, which motion is resisted by the plaintiff on the ground that plaintiff is thereby denied the right of trial by jury; and, the court being duly advised—

It is considered and ordered by the court that said motion for a reference be, and it is hereby, granted.

And it is further ordered that this cause be, and it is hereby, referred to Wm. D. Lee, as referee, to take the proofs of the plaintiff herein, and that said referee, to whom this cause is referred, report his findings of fact and conclusions of law in this cause with all possible speed.

And thereafter, on, to wit, the 18th day of August, 1898, there was filed in the office of the clerk of said court in said cause the referee's report; which said report is in words and figures following, to wit:

In the District Court, County of Bernalillo, Territory of New Mexico.

JUSTO R. ARMIJO
vs.
BARBARA CHAVEZ DE ARMIJO. } No. 4728.

Referee's Report.

To the Honorable J. W. Crumpacker, associate justice of the supreme court of the Territory of New Mexico and judge of said district court:

As referee in the above-entitled cause I do respectfully report:

That, having heretofore been appointed referee in the above-entitled cause, I caused said parties, together with their respective counsel and witnesses, in pursuance of due notice given in accordance with the statute, to appear before me in my office, in the city of Albuquerque, on the 5th day of May, 1898, and on a number of days thereafter, for the purpose of submitting their respective
11 proofs in the above-entitled cause; that a large amount of typewritten testimony was taken before me, comprising one hundred and sixty-one pages of such typewritten testimony, and a large number of exhibits were introduced in evidence and filed with me as referee, all of which testimony and exhibits are returned herewith as a part of my report.

Said case is an action in assumpsit on the common counts, wherein the plaintiff demands ten thousand dollars damages.

The defendant pleads non-assumpsit and a set-off for fourteen thousand dollars, also on the common counts, against the plaintiff.

The issues being thus formed, it would appear the controversy would be simply the correct balance between them; but the first question that arose was as to the existence of a contract claimed to have been entered into between the parties on the 20th day of June, 1892, by which the defendant had employed the plaintiff to work for her at an annual salary of $2,500.00 per year, which alleged contract was claimed to have been in writing, but had been lost. The existence of this contract was most emphatically denied by defendant, thus raising an issue of fact, the existence of which extended through many days, making a record of many pages of typewriting.

Plaintiff introduced what he claimed to be a copy of the contract, which reads as follows:

"Copy, April 25, 1898."

ALBUQUERQUE, N. MEX., *June* 25, 1892.

This agreement made on the date above written between us is: That from the first day of January, 1892, J. R. Armijo shall be paid for his services at the rate of ($2,500.00) two thousand five
12 hundred dollars per year.

J. R. ARMIJO.
MRS. N. T. ARMIJO.

(The above is a certified translation made by the court stenographer.)

If this contract should be admitted in evidence it would prove but one controverted question in the case, and that is as to the amount of plaintiff's compensation. The fact that plaintiff performed the services as set forth in the declaration is not denied, nor is the testimony of plaintiff as to the value of his services disputed by any other evidence in the case. Mr. Dickmann was asked as to the value of the services for collecting the rents for the N. T. Armijo building, which he said were five per cent., but does not pretend to say what the services of plaintiff were or the value thereof. The defendant herself does not claim to know, but testifies most positively that she does not know. On page 59 of the record, in answer to a question, she gives an unequivocal answer as follows:

Q. Mrs. Armijo, do you know what the services of J. R. Armijo were reasonably worth in acting for you as your agent during the period he was so engaged up to December 31st, 1896, for each year?

A. I don't know what the services were worth. They must have been like the services of all managers.

Q. Do you know, Mrs. Armigo, what services were performed by J. R. Armigo for you during these years before December 31st, 1896?

A. He collected my rents, attended to all my business, taxes and

all; collect the rents, pay the taxes every year, and pay my accounts every year.

Q. Do you know how much of his time was occupied to do that?

13 A. I do not.

The testimony of defendant shows that the employment of plaintiff was not confined to collecting rents of the Armijo building, while the testimony of plaintiff is to the effect that the entire charge and management of the whole estate was the services rendered.

There being no testimony offered on the part of the defendant in any way controverting the value plaintiff sets upon his services, the admission of the contract becomes immaterial, and it would have no effect on the result of the case. Plaintiff testifies that his services were worth twenty-five hundred dollars per annum, the same amount as which was claimed to be fixed in the alleged agreement, and, as there is no testimony controverting this value, the referee will have to take this amount as correct in summing up the case.

There is no dispute as to the period of services rendered by plaintiff for the defendant being five years, nor is there any question or dispute as to the amount of money claimed by plaintiff to have been advanced by him for the use of defendant, this amount being $3,717.65.

The defendant introduces under her set-off a note given by plaintiff for the sum of $6,000, made July 11th, 1892, with interest at four per cent. per annum; also a check for $3,824.48, cash that plaintiff received from defendant about the date of his employment and which defendant testifies and claims was paid plaintiff as an advance for services to be rendered in the future. There is no evidence on the part of plaintiff disputing the first of these items.

He admits giving the note, and says in his testimony that it
14 was for borrowed money. As to the second item, there is not sufficient proof to establish it as a gift from defendant to plaintiff, as claimed by him. Referee therefore finds that said plaintiff is properly chargeable with the amount of said item.

A statement of the account between them, as shown by the evidence, is as follows:

Am't claimed by Mrs. N. T. Armijo to have been paid to J. R. Armijo for future services	$3,824.48
Less salary for J. R. Armijo for year 1892	2,500.00
Jan. 1. 1893. Balance due Mrs. N. T. Armijo on money advanced	$1,324.48
Jan. 1, 1894. Note of J. R. Armijo to Mrs. Armijo, dated July 11, 1892	6,000.00
Jan. 1, 1894. Interest on above note from July 11, 1892, to January 1, 1894, at 4 per cent., 1 yr. 5 mos. and 20 days	353.33
Jan. 1, 1894. Amount due Mrs. Armijo	$7,677.81
Less salary for J. R. Armijo for 1893	2,500.00
Amount due Mrs. Armijo Jan. 1, 1894	$5,177.81
Jan. 1, 1895. Inte. at 4 per cent., 1 yr	207.11
Jan. 1, 1895. Amount due Mrs. Armijo	$5,384.92
Less salary for J. R. Armijo for 1894	2,500.00
Amount due Mrs. Armijo Jan. 1, 1895	$2,884.92
Jan. 1, 1896. Int. at 4 per cent., 1 yr	115.39
Jan. 1, 1896. Amount due Mrs. Armijo	$3,000.31
Less salary J. R. Armijo for 1895	2,500.00
Amount due Mrs. Armijo Jan. 1, 1896	$500.31
15 Apr. 1, 1896. Three months' interest at 4 per cent	5.00
	$505.31
Apr. 1, 1896. Salary J. R. Armijo, 3 months	625.00
Balance due J. R. Armijo April 1, 1896	119.69
Dec. 31, 1896. Salary J. R. Armijo from April 1, 1896, to December 31st, 1896, 9 months	1,875.00
Balance due J. R. Armijo Jan. 1, 1897, on account of salary	$1,994.69
Amount advanced by J. R. Armijo for Mrs. Armijo	3,717.65
Total amount due J. R. Armijo Jan. 1, 1897	$5,712.34
Amount due J. R. Armijo July 1st, 1897, being six months from the date when Mr. Armijo severed his connection with the business of Mrs. Armijo, and being six months from the date of the last item in said account	$5,712.34
Interest from July 1st, 1897, to August 15th, 1898, 1 yr. 1 mo. and 15 days, at six per cent	385.58
	$6,097.92

In a running account such as this, where money is advanced by both sides and one party is in the employment of the other, no interest should be allowed on balances unless expressly agreed to, and can only be allowed six months from the date of the
16 last item. In summing up the account I find that there was due J. R. Armijo a balance of $5,712.34 on January 1st, 1897, and with interest six months from that date up to the present time, or date of this report, at six per cent., being one year 1 month and 15 days, amounts to $385.58. I therefore find that there is a balance due J. R. Armijo from Barbara Chavez de Armijo on the 15th day of August, 1898, of $6,097.92, and I respectfully recommend that a judgment be entered in favor of J. R. Armijo for that amount, together with costs.

In compliance with the statutes, I certify that testimony or proofs were introduced before me for full nine days, and that I have been occupied six days in examining the books, exhibits, and testimony and authorities in this cause, which are very voluminous, and in getting up my report as referee.

All of which is respectfully submitted.

WM. D. LEE, *Referee.*

In the District Court, County of Bernalillo, Territory of New Mexico.

JUSTO R. ARMIJO
vs.
BARBARA CHAVES DE ARMIJO.

TERRITORY OF NEW MEXICO,
County of Bernalillo.

I, William D. Lee, having been heretofore appointed referee in the above-entitled cause by said court, do solemnly swear that I will faithfully and fairly hear and examine the cause and make a just, impartial, and true report, according to the best of my understanding.

WM. D. LEE.

Subscribed and sworn to before me this 5th day of May, A. D. 1898.

HARRY F. LEE,
Notary Public.

(Endorsed: Filed in my office this August 18, 1898. Harry P. Owen, clerk.)

17 And thereafter, on, to wit, the 18th of August, A. D. 1898, there was filed in the office of the said clerk of said court the oral testimony taken before Hon. W. D. Lee, the referee in said cause; which said testimony is in words and figures following, to wit:

* * * * * * *

* * * * * * *

184 Mr. WARREN: That is the case of defendant.
Mr. FIELD: I have no further testimony.

And thereafter, on, to wit, the second day of September,
185 1898, there *was* filed in the office of the clerk of said court in said cause exceptions to referee's report and motion to set same aside; which said exceptions and motion are in words and figures following, to wit:

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

In the District Court, Second Judicial District.

JUSTO R. ARMIJO
vs.
BARBARA CHAVEZ DE ARMIJO. } No. 4728.

The defendant herein, Barbara Chavez de Armijo, comes and excepts to the report of W. D. Lee, Esq., referee herein, dated August 15th, 1898, and filed in the office of the clerk of said court on August 18, 1898, upon the grounds hereinafter specified, to wit:

First. For that the said referee erroneously reported that there was due to the said plaintiff from the said defendant on August 15th, 1898, a balance of $6,097.92, whereas the said referee should have reported a balance of a large amount due from the plaintiff to the defendant on said account.

Second. For that the said referee erroneously admitted in evidence secondary proof of the contents of the alleged contract between said parties purporting to have been copied upon page 988 of the letter-press copy book, marked Exhibit 1 for identification, over defendant's objection.

Third. For that the said referee erroneously admitted the paper-writing, Plaintiff's Exhibit 2, for identification, over defendant's objection.

Fourth. For that the said referee erroneously overruled the objections of the defendant to the admission and rejection of evidence upon the hearing, which objections appear noted in the report of the said referee, and each one of which objections and exceptions is hereby referred to and made part hereof as fully as if the same were incorporated herein.

186 Fifth. For that the findings of fact by said referee are against the evidence in said cause taken and reported by said referee.

Sixth. And for that the conclusions of law by said referee are insufficient and erroneous.

Seventh. For other errors prejudicial to the defendant and apparent upon the record and of said report.

Wherefore the defendant prays the court that the said report be set aside, and that the said cause be again referred, with proper instructions, to the referee.

WARREN & FERGUSSON,
Attorneys for Defendant.

Service of copy acknowledged this Sept. 2nd, 1898.

NEILL B. FIELD,
Per A. B. READING.

(Endorsed: Filed in my office this September 2nd, 1898. Harry P. Owen, clerk.)

And thereafter, on, to wit, the 15th day of September, 1898, there was an order duly made and entered and filed in said cause; which said order is in words and figures following, to wit:

TERRITORY OF NEW MEXICO:

Bernalillo District Court.

JUSTO R. ARMIJO, Plaintiff,
vs.
BARBARA C. DE ARMIJO, Defendant. } No. 4728.

Judgment.

This cause coming on to be heard upon the exceptions of the defendant to the report of Wm. D. Lee, referee herein, heretofore filed in this cause, and the court having seen the said exceptions and the said report, and having heard counsel for the said defendant
187 in support of the said exceptions, and being now sufficiently advised of and concerning the same—

It is considered, ordered, and adjudged by the court that the said exceptions be, and each of the same hereby is, overruled and denied, and that the report of the said referee be, and the same hereby is, in all things approved and confirmed.

It is further considered, ordered, and adjudged by the court that the findings of the said referee herein be, and the same are hereby, adopted as the findings of this court; and in pursuance thereof and in accordance therewith it is considered, ordered, and adjudged by the court that the plaintiff, Justo R. Armijo, do have and recover of and from the defendant, Barbara Chavez de Armijo, the sum of six thousand and ninety seven dollars and ninety-two cents ($6,097.92), with interest thereon, at the rate of six per cent. per annum, from the 15th day of August, 1898, until paid, together with his costs in this behalf expended, to be taxed, including the sum of one hundred and fifty dollars ($150.00) which is hereby allowed to the said referee for his compensation in the said cause, and the sum of sixty-nine and $\frac{75}{100}$ dollars ($69.75) which is hereby allowed for the services of the stenographer employed by the referee, by consent of the parties, in taking down and transcribing the testimony before the referee herein, not including the extra copies of the said testimony furnished by the stenographer to the respective parties in the cause, and that he have execution therefor.

And thereupon the defendant, by her attorney, gives notice of an appeal to the supreme court of the Territory of New Mexico.

(Signed) J. W. CRUMPACKER, *Judge.*

188 (Endorsed: Filed in my office this September 15th, 1898. Harry P. Owen, clerk.)

And thereafter, on, to wit, the 4th day of October, 1898, there was filed in the office of the clerk of said court in said cause a supersedeas bond; which said bond is in words and figures following, to wit:

Know all men by these presents that we, Barbara Chavez de Armijo, as principal, and Mariano S. Otero, Juan C. Armijo, Eloise Armijo, *are* sureties, all of the county of Bernalillo and Territory of New Mexico, are held and firmly bound unto Justo R. Armijo, of said county and Territory, in the penal sum of thirteen thousand ($13,000.00) dollars; for the payment whereof they respectively bind themselves and their respective *real* and respective representatives firmly by these presents.

The condition of the above obligation is such that whereas, on, to wit, September —, 1898, in the district court for the county of Bernalillo and Territory of New Mexico, judgment was rendered in a certain cause therein pending, wherein Justo R. Armijo is plaintiff and Barbara Chavez de Armijo is defendant, in favor of said plaintiff and against the said defendant, for the sum of six thousand and ninety-seven ($6,097.92) dollars and ninety-two cents, with interest thereon from August 15th, 1898; and whereas the above-bounden Barbara Chavez de Armijo, defendant in said action, has prayed an appeal

from said judgment to the supreme court of the Territory of New Mexico:

Now, therefore, the condition of the above obligation is such that if the said appellant, Barbara Chavez de Armijo, shall prosecute her said appeal from said judgment with due diligence in said
189 supreme court, and if said judgment appealed from shall be affirmed, or, if her said appeal shall be dismissed, said appellant shall pay the said judgment so rendered against her in said cause and all costs that may be adjudged against her in the said supreme court in said appeal, then the above obligation to be void; but otherwise the same shall remain in full force and effect.

In witness whereof said parties hereto have respectively hereunto set their hands and seals this October 3rd, 1898.

BARBARA CHAVEZ DE ARMIJO. [SEAL.]
MARIANO S. OTERO. [SEAL.]
JUAN C. ARMIJO. [SEAL.]
ELOISA ARMIJO. [SEAL.]

TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

Before me, the undersigned, notary public within and for said county and Territory, this day came Mariano S. Otero, Juan C. Armijo, and Eloisa Armijo, who are respectively known to me to be the identical persons who executed and whose names are subscribed to the foregoing appeal bond, and severally acknowledged, each for himself, that he executed the said bond for the purposes therein mentioned.

And the said Mariano S. Otero, being by me duly sworn, says that he is worth the sum of thirteen thousand dollars in property situated in said county and Territory over and above his just debts and liabilities and subject to execution therein.

And the said Juan C. Armijo, being by me duly sworn, says that he is worth the sum of three thousand dollars in property situated in said county and Territory and subject to execution therein over and above all his just debts and liabilities.

And the said Eloisa Armijo, being by me duly sworn, says
190 that she is worth the sum of three thousand dollars in property situated in said county and Territory and subject to execution therein over and above all her just debts and liabilities.

In witness whereof I have hereunto set my hand and affixed my notarial seal this October 3rd, 1898.

[NOTARIAL SEAL.] H. LOCKHART, JR.,
Notary Public.

Approved by me this 3rd day of October, 1898.

J. W. CRUMPACKER, *Judge.*

Done at chambers October 3rd, 1898.

(Endorsed: Filed in my office this October 4th, 1898. Harry P. Owen, clerk.)

And thereafter, on, to wit, the 13th day of July, 1899, there was filed in the office of the clerk of said court in said cause a motion; which said motion is in words and figures following, to wit:

In the District Court, County of Bernalillo, Territory of New Mexico.

JUSTO R. ARMIJO, Plaintiff,
vs.
BARBARA CHAVEZ DE ARMIJO, Defendant. } No. 4728.

The defendant moves the court for an order directing the clerk of this court to enter an order granting an appeal from the final judgment herein as of date of October 4th, 1898, and for ground of this motion states that on said date an appeal was taken by the said defendant, and allowed by the court, to the supreme court of this Territory, and the appeal bond of said defendant was approved and filed on said date, and the taking of said appeal does not
191 sufficiently appear upon the record or minutes of the court.

WARREN & FERGUSSON,
Defendant's Attorneys.

H. L. Warren, being duly sworn, says he is one of the attorneys for defendant in said cause, and that he knows the contents of the above motion, and that the facts therein stated are true, to the best of his knowledge and belief.

H. L. WARREN.

Subscribed and sworn to before me this July 13th, 1899.

[NOTARIAL SEAL.] JUSTO L. ARMIJO,
Notary Public.

To said plaintiff and Hon. N. B. Field, his attorney:

You are hereby respectively notified that the defendant will call up the motion, a copy of which is attached hereto, on the 19th day of July, 1899, before Hon. J. W. Crumpacker, judge of said district court, for the county of Bernalillo, at the court-house at Albu-

querque, N. M., at ten o'clock a. m. of said day or as soon thereafter as counsel can be heard.

WARREN & FERGUSSON,
Attorneys for Defendant.

Copy served by delivery of same at the office of plaintiff's attorney, Hon. N. B. Field, to Mr. Ralph Hunt, his clerk, on this July 13th, 1899.

H. L. WARREN.

(Endorsed: Filed in my office this July 13th, 1899. Harry P. Owen, clerk.)

And thereafter, on, to wit, the 20th day of July, 1899, there was an order duly made by the court in said cause, and filed and entered of record in the office of the clerk of said court; which said order is in words and figures following, to wit:

192 JUSTO R. ARMIJO *vs.* BARBARA CHAVEZ DE ARMIJO. } No. 4728.

The motion of defendant filed herein on July 13th, 1899, for an order directing the clerk to enter upon the minutes an order granting an appeal from the final judgment herein as of the date of October 4th, 1898, for the reason that, as claimed by the defendant, that such appeal was taken and allowed, and a supersedeas bond was then approved and filed, having come on to be heard and having been argued by counsel and submitted to the court, the said motion is overruled and denied by the court; to which order and ruling of the court the defendant, by her attorneys, then and there duly excepted and now excepts.

(Signed) J. W. CRUMPACKER, *Judge.*

(Endorsed: Filed in my office this July 20, 1899. Harry P. Owen, clerk.)

And thereafter, on, to wit, the 15th day of September, 1899, there was lodged in the office of said clerk of said court a writ of error; which said writ is hereto attached and is in words and figures following, to wit:

Territory of New Mexico to the district court of the 2nd judicial district of the Territory of New Mexico, sitting within and for the county of Bernalillo, Greeting:

Because in the record and proceedings and in the rendition of judgment in a certain cause lately pending before you, wherein Justo R. Armijo was plaintiff and Barbara Chavez de Armijo was

defendant, error has intervened, as it is said, to the damage
193 of the said Barbara Chavez de Armijo, and we, being willing that such error, if any there be, should be corrected and speedy justice done in that behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send a copy of the record and proceedings aforesaid to the supreme court of the Territory of New Mexico, together with this writ, so that you have the same in the said supreme court on the first day of the next term thereof, to be begun and held on the first Wednesday after the first Monday in January, A. D. 1900, at Santa Fé, in said Territory, in pursuance of law.

Witness the Honorable William J. Mills, chief justice of the supreme court of the Territory of New Mexico, and the seal of the said court, this 14th day of September, A. D. 1898.

JOSE DE SENA, *Clerk.*

[SEAL.]

And thereafter, on, to wit, the 20th day of October, 1899, there was filed in the office of the clerk of said court in said cause a præcipe for transcript; which said præcipe is in words and figures following, to wit:

In the District Court of the Second Judicial District of the Territory of New Mexico.

JUSTO R. ARMIJO
vs.
BARBARA C. DE ARMIJO. } No. 4728.

To Harry P. Owen, clerk:

You will please make out a transcript to be used in the above cause on appeal of the following:

1. Declaration.
2. Defendant's pleas.
3. Replication.
4. Order of reference.
5. Report of referee and oral testimony taken before referee.
194 6. Exceptions to referee's report and motion.
7. Final decree.
8. Supersedeas appeal bond and approval thereof.
9. Motion of defendant for entry of appeal.
10. Order overruling same.
11. This præcipe.

WARREN & FERGUSSON,
Attorneys for Defendant.

(Endorsed: Filed in my office this 20th day of October, 1899. Harry P. Owen, clerk.)

I, Harry P. Owen, clerk of the district court of the second judicial district of the Territory of New Mexico within and for the county of Bernalillo, in accordance with the command contained in the foregoing writ of error, make return thereto by sending to the supreme court of the Territory of New Mexico the foregoing, which I hereby certify to be a true, correct, and complete transcript of so much of the record and proceedings had in that certain cause lately pending in the district court for the county of Bernalillo, wherein Justo R. Armijo was plaintiff and Barbara Chavez de Armijo was defendant, as was ordered to be certified by the defendant in error, Barbara Chavez de Armijo, in said cause, as the same appears of record and on file in my said office.

In witness whereof I have hereunto set my hand and affixed the seal of said court on this 2nd day of November, A. D. 1899.

[SEAL.] HARRY P. OWEN, *Clerk.*

Inasmuch, therefore, as the evidence introduced on the trial
195 of said cause and the rulings of the court and exceptions taken to such rulings upon the introduction of such evidence are not matters of record in said cause, the said defendant, Barbara Chavez de Armijo, pray- that this *their* bill of exceptions, containing such evidence and exceptions, may be signed, sealed, and made a part of the record in said cause, which is done accordingly this — day of November, A. D. 1899.

——— ———,

Associate Justice of the Supreme Court of the Territory of New Mexico and Judge in and for the Second Judicial District for Bernalillo County.

195 Now, on this 18th day of November, A. D. 1899, comes the defendant, by her attorneys, and presents to the court the foregoing bill of exceptions to be by the court sealed, signed, and settled as such, notice thereof having been duly given to plaintiff, he being present by counsel; but the court declines and refuses to so sign, seal, and settle the same; whereupon defendant excepts to the action of the court.

J. W. CRUMPACKER, *Judge.*

196 And afterwards, to wit, on the 14th day of December, A. D. 1899, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico an assignment of errors; which said assignment of errors was and is in words and figures as follows, to wit:

Assignment of Errors.

Now comes the plaintiff in error, defendant below, and says that there is manifest error in the record and proceedings in said cause in the court below, in this, to wit:

1. The court erred in overruling the defendant's objections to the report of the referee and motion to set the same aside upon the grounds specified therein (Transcript of Record, pp. 185, 186).

2. The court and referee erred in admitting in evidence secondary evidence of the contents of the alleged copy of contracts between the parties, of which Complainant's Exhibit 2 is a copy (Record, p. 26 *et seq.*).

3. The court and referee erred in admitting evidence of value of the alleged services of plaintiff below (Record, p. 37 *et seq.*).

4. The court and referee erred in overruling the objections of the defendant below to evidence offered on the part of plaintiff below. (See pp. 47–91–117–135–170 *et seq.*, Transcript of Record.)

5. The court and referee erred in excluding competent evidence offered by defendant below. (See pp. 113 *et seq.*, Transcript of Record.)

6. The findings of fact by the referee, approved by the court below, are against the evidence.

7. The conclusions of law found by the referee and approved by the court are insufficient and erroneous.

8. The court erred in overruling the motion of plaintiff in error, the defendant below, for entry of an order granting an appeal herein (Transcript, p. 192).

9. Other errors apparent upon the face of the record.

WARREN & CHAVEZ,
Attorneys for Plaintiff in Error.

197 And afterwards, to wit, on the 23rd day of December, A. D. 1899, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a notice and motion to affirm judgment; which said notice and motion was and is in words as follows, to wit:

TERRITORY OF NEW MEXICO:

In the Supreme Court, January Term, A. D. 1900.

BARBARA CHAVES DE ARMIJO, Appellant,
vs.
JUSTO R. ARMIJO, Appellee. } No. 847.

BARBARA CHAVES DE ARMIJO, Plaintiff in Error,
vs.
JUSTO R. ARMIJO, Defendant in Error. } No. 840.

Notice of Motion.

To Barbara Chaves de Armijo, plaintiff in error and appellant, and to Messrs. Warren & Chavez, her attorneys:

You will please take notice that the undersigned, attorney for appellee and defendant in error in the above-entitled cause, will move the honorable the supreme court of the Territory of New Mexico, at Santa Fé, in said Territory, on the 3rd day of January, 1900, at the hour of ten o'clock a. m., or as soon thereafter as counsel can be heard, to strike from the transcript filed in each of the causes so much and such parts thereof as purpost to set forth the evidence adduced on the hearing of the cause sought to be reviewed,
198 and to affirm the judgment of the court below, and to enter judgment in this court against said appellant, and the sureties on her supersedeas bond in cause No. 847 for the amount of said judgment and interest, and ten per cent. damages, for the reasons set forth in the motion, a copy of which is hereto annexed; and you can appear and resist the said motion if you see fit to do so.

NEIL B. FIELD,
Attorney for Justo R. Armijo, Appellant and Defendant in Error.

Service of a copy of the foregoing notice, with copy of motion thereto attached, admitted this 23rd day of December, 1899.

WARREN & CHAVEZ,
Attorneys for Appellant and Plaintiff in Error.

TERRITORY OF NEW MEXICO:

In the Supreme Court, January Term, A. D. 1900.

BARBARA CHAVEZ DE ARMIJO, Appellant,
vs.
JUSTO R. ARMIJO, Appellee. } No. 847.

BARBARA CHAVEZ DE ARMIJO, Plaintiff in Error,
vs.
JUSTO R. ARMIJO, Defendant in Error. } No. 840.

Motion to Affirm Judgment.

Comes now Justo R. Armijo, appellee and defendant in error in the above-entitled cause, by Neil B. Field, his attorney, and moves the court to strike from the transcript filed in each of said causes so much and such part thereof as purports to set forth the evi-
199 dence adduced on the hearing of the cause sought to be reviewed and to affirm the judgment of the court below, and to enter judgment in this court against the appellant and the sureties on her supersedeas bond in cause No. 847 for the amount of said judgment and interest and for ten per cent. damages, for the following reasons:

I.

Because no question of law is properly reserved for determination by this court upon the record as made up.

II.

Because no motion for new trial was filed in the court below within ten days after the rendition of the judgment sought to be reviewed, as required by law.

III.

Because what purports to be the oral testimony taken before the referee in said cause is not authenticated as required by law, and is therefore not a part of the record.

IV.

Because if affirmatively appears from the transcript that the documentary evidence used before the referee was omitted from the transcript by direction of the attorneys for plaintiff in error and appellant, and the sufficiency of the evidence to support the findings and judgment cannot be reviewed if what purports to be the oral evidence were properly authenticated.

V.

Because the so-called assignment of errors is insufficient and does not require an examination of alleged errors at the hands of the court.

VI.

Because the so-called brief of appellant and plaintiff in error is in no sense a brief, but amounts to a mere evasion of the rules of the court requiring briefs to be filed.

VII.

200 Because the appeal and writ of error have operated to stay proceedings on the judgment of the district court and appear to have been taken and sued out merely for delay.

NEILL B. FIELD,
Attorney for Appellee and Plaintiff in Error.

And afterwards, to wit, — a regular term of the supreme court of the Territory of New Mexico begun and held at Santa Fé, the seat of government, on the first Wednesday after the first Monday in January, the same being the 3rd day of January, in the year of our Lord one thousand nine hundred, on the second day thereof, the same being Thursday, January 4th, A. D. 1900, the following, among other, proceedings were had, as follows, to wit:

BARBARA CHAVES DE ARMIJO, Plaintiff in Error, *vs.* JUSTO R. ARMIJO, Defendant in Error.	No. 840. Error to District Court, Bernalillo County.

This cause coming on to be heard upon the motion of the defendant in error for an affirmance of judgment, the same was argued by Neill B. Field, Esq., for defendant in error, and H. L. Warren, Esq., for plaintiff in error, and submitted to the court, and, the court not being sufficiently advised in the premises, takes the same under advisement.

BARBARA CHAVES DE ARMIJO, Appellant, *vs.* JUSTO R. ARMIJO, Appellee.	No. 847. Appeal from District Court, Bernalillo Co.

This cause coming on to be heard upon a motion of appellee for an affirmance of judgment, the same was argued by Neill B. Field, Esq., for appellee, and H. L. Warren, Esq., for appellant, and submitted to the court, and, the court not being sufficiently advised in the premises, takes the same under advisement.

201 And afterwards, to wit, on the twelfth day of said regular term, the same being Thursday, the 16th day of January, A. D. 1900, the following, among other, proceedings were had, as follows, to wit:

BARBARA CHAVES DE ARMIJO, Plaintiff in Error and Appellant, *vs.* JUSTO R. ARMIJO, Defendant in Error and Appellee.	Nos. 840–7. Error to and Appeal from District Court, Bernalillo County.

This cause having heretofore been heard on the motion of appellee and defendant in error to strike out portions of the transcript and to affirm the judgment of the court below, and to enter same against the appellant in No. 847, and the sureties on her supersedeas bond, with ten per cent. damages, and the court, having had the same under advisement and being now fully advised in the premises, it is considered, adjudged, and decreed by the court that the motion of the defendant in error and appellee to affirm the judgment of the court below on the ground that no motion for a new trial was filed in said cause, and to enter same against appellant and the sureties on her supersedeas bond be, and the same hereby is, sustained and the said motion otherwise be overruled; and that it is further considered, ordered, adjudged, and decreed by the court that the judgment of the court below be made the judgment of this court and entered against appellant and the sureties on her appeal bond in this No. 847.

Wherefore it is considered, ordered, and adjudged by the court that appellee, Justo R. Armijo, do have and recover of the appellant, Barbara Chaves de Armijo, and Mariano S. Otero, Juan C. Armijo, and Eloisa Armijo, sureties on her supersedeas bond, the sum of six thousand six hundred and sixteen ($6,616.24) dollars and twenty-four cents *a* and interest at the rate of six per cent. per annum from date until paid, together with all costs incurred in the court whence this cause came into this court, amounting to
202 two hundred and forty-one ($241.00) dollars, and the costs of this court, to be taxed, and that he may have execution therefor.

And afterwards, to wit, on the 20th day of January, A. D. 1900, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a motion for rehearing; which said motion for rehearing was and is in words and figures as follows, to wit:

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1900.

BARBARA CHAVES DE ARMIJO, Plaintiff in Error, *vs.* JUSTO R. ARMIJO, Defendant in Error.	No. 840 (No. 847, Appeal).

Barbara Chaves de Armijo, the plaintiff in error in the above-entitled cause, respectfully moves the court for a rehearing on the judgment, decision, and order entered in this court in this cause on,

to wit, January 17th, A. D. 1900, and for grounds of this motion shows unto the court the following causes, viz:

The following questions, decisive of said cause and duly submitted by counsel for plaintiff in error, have been overlooked by this honorable court:

1.

In sustaining the respective motions of defendant in error and appellee to affirm the judgment below, this court overlooked the following error, duly assigned herein:

8. The court erred in overruling the motion of appellant and plaintiff in error for entry of an order granting an appeal herein (Transcript, p. 192).

203 The supersedeas appeal bond approved and signed by his honor the judge of the district court below on October 4, 1892, expressly recites the appeal prayed by said defendant, Barbara Chaves de Armijo, from the judgment below to this court (p. 188), and this court overruled the recital of said fact in sustaining the motion of defendant in error upon said ground.

2.

This court, in affirming the judgment below, overlooked the fact, shown by the record herein, that in the district court below due written objections and exceptions were filed in due time by the defendant below and argued and submitted to said district court, and that therefore, under the rules and practice in such cases provided, a motion for a new trial was not required or necessary, and such motion upon said facts would have been a reflection upon the court below.

3.

This court overlooked the assignment of errors No. 3, as follows: "The court and referee erred in admitting evidence of value of the alleged services of plaintiff below" (Record, p. 37).

The record distinctly shows that plaintiff below himself testified that his services were rendered under a written agreement between the parties (p. 36, Record), and that said agreement had been written and signed upon p. 988 of the latter-press copy book offered in evidence (Record, p. 47), and that said page containing such alleged written agreement had been removed from said book and was lost.

Upon the facts testified to by plaintiff we submit that while evidence of the contents of the lost paper might have been admissible in evidence, it was clearly an error decisive of this cause to permit a recovery upon testimony of plaintiff to the value of such alleged services upon a *quantum meruit* as reported by the referee and entered by the court.

204 Wherefore your petitioner prays that she may be granted a rehearing of this cause; and she will ever pray, &c.

WARREN & CHAVES,
Attorneys for Plaintiff in Error.

I hereby acknowledge service of a copy of the foregoing this 19th day of Jan'y, 1900.

NEILL B. FIELD,
Att'y for Def't in Error.

And afterwards, to wit, on the nineteenth day of said regular term, the same being Wednesday, the 24th day of January, A. D. 1900, the following, among other, proceedings were had as follows, to wit:

BARBARA CHAVES DE ARMIJO, Plaintiff in Error and Appellant, *vs.* JUSTO R. ARMIJO, Defendant in Error and Appellant.	Nos. 840–7. Error to and Appeal from District Court, Bernalillo County.

This cause having come before the court upon a motion for a rehearing in the above-entitled causes, the court, having had the same under advisement and being now sufficiently advised in the premises, overrules said motion. It is therefore considered and adjudged by the court that the motion for rehearing by appellant and plaintiff in error be, and the same hereby is, overruled.

And afterwards, to wit, on the 25th day of January, A. D. 1900, there was filed in the office of the clerk of the said supreme court a motion for an appeal to the Supreme Court of the United States; which said motion for an appeal to the Supreme Court of the United States is in words and figures as follows, to wit:

205 In the Supreme Court of the Territory of New Mexico, January Term, 1900.

BARBARA CHAVES DE ARMIJO, Appellant, *vs.* JUSTO R. ARMIJO, Appellee.	No. 847. Appeal from District Court, Bernalillo Co.
BARBARA CHAVES DE ARMIJO, Plaintiff in Error, *vs.* JUSTO R. ARMIJO, Defendant in Error.	No. 840. Error to District Court, Bernalillo County.

Now comes the plaintiff in error and appellant, Barbara Chaves de Armijo, by H. L. Warren and H. B. Fergusson, her attorneys, and prays to the court to grant her an appeal from the judgment and decision of this honorable court in these cases to the Supreme Court of the United States, and that the execution heretofore issued out of this court against said plaintiff in error and appellant be recalled and further execution herein stayed upon the filing and approval

by this court by said plaintiff in error and appellant of a supersedeas bond, as required by law; and she will every pray.

H. L. WARREN,
H. B. FERGUSSON,
Attorneys for Plaintiff in Error and Appellant.

And afterwards, to wit, on the twenty-first day of said regular term, the same being Friday, the 26th day of January, the following, among other, proceedings were had, as follows, to wit:

206 BARBARA CHAVES DE ARMIJO, Plaintiff in Error & Appellant,
vs.
JUSTO R. ARMIJO, Defendant in Error & Appellee.
Nos. 840–7. Appeal from and Error to District Court, Bernalillo County.

This cause coming on to be heard upon the application and prayer of the plaintiff in error and appellant for the granting of an appeal herein from the judgment and decision of this court to the Supreme Court of the United States and for an order recalling the execution heretofore issued herein pending such appeal, and the court having duly considered such application and prayer, it is therefore ordered and adjudged by the court that such application and prayer be granted, and on the filing of a supersedeas bond, duly approved by the court, in the sum of double the amount of the judgment rendered herein it is ordered and considered by the court that the execution heretofore issued in said cause *is* ordered to be recalled and further execution stayed pending such appeal.

And afterwards, to wit, on the 30th day of January, there was filed in the office of the said clerk of the said supreme court a supersedeas bond; which said supersedeas bond is in words and figures as follows, to wit:

Know all men by these presents that we, Barbara Chaves de Armijo, as principal, and Frank A. Hubbell, Juan C. Armijo, and —— ——, as sureties, are held and firmly bound unto Justo R. Armijo in the full sum of fourteen thousand ($14,000) dollars, to be paid to the said Justo R. Armijo, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of January, in the year of *of* Lord one thousand nine hundred (1900).

Whereas lately, at a session of the supreme court of the Territory of New Mexico, in a suit pending in said court between Barbara Chaves de Armijo, plaintiff in error, *vs.* Justo R. Armijo, de-
207 fendant in error, a final judgment was rendered against the said Barbara Chaves de Armijo, and the said Barbara Chaves de Armijo having obtained the allowance of an appeal to the Supreme Court of the United States of America:

Now, the condition of the above obligation is such that if the said Barbara Chaves de Armijo shall prosecute said appeal to effect and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

BARBARA CHAVES DE ARMIJO. [SEAL.]
FRANK A. HUBBELL. [SEAL.]
JUAN C. ARMIJO. [SEAL.]

Sealed and delivered in presence of—
S. B. GILLETT.

Approved, to operate as a supersedeas, by—
WILLIAM J. MILLS,
Chief Justice of the Supreme Court of the Territory of New Mexico.

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

This day personally appeared before me, the undersigned authority, a notary public in and for Bernalillo county, New Mexico, Barbara Chaves de Armijo, principal in the above undertaking, and Frank A. Hubbell, Juan C. Armijo, and —— ——, sureties on the above bond, and each of said sureties, being by me severally sworn, says that he is worth the sum of fourteen thousand ($14,000) dollars in property situate in the Territory of New Mexico, over and above his just debts and liabilities, that is subject to execution under the laws of said Territory, and all of said parties acknowledged to me that they signed said bond as their free act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Albuquerque, New Mexico, this 26th day of January, A. D. 1900.

FELIX H. LESTER,
Notary Public.

[SEAL.]

My commission expires Nov. 3rd, 1902.

208 And afterwards, to wit, there was filed on the second day of February, in the office of the said clerk of the supreme court, a statement of facts; which said statements of facts by the court is in words and figures as follows, to wit:

In the Supreme Court of the Territory of New Mexico, January Term, 1900.

BARBARA CHAVES DE ARMIJO, Appellant, vs. JUSTO R. ARMIJO, Appellee. } No. 840–7. Appeal from Dist. Court, Bernalillo Co.

Application having been made to the court to find the facts in this cause in accordance with the requirements of the act of Congress, it is ordered to be certified to the Supreme Court of the United States that this court, for reasons disclosed by the judgment, is una-

ble to find the facts, the appeal not having been perfected in such manner as to bring the facts of the case into this court.

WILLIAM J. MILLS,
Chief Justice, etc.

To the above and foregoing purported statement of facts the said appellant excepted *and* at the time, and still excepts.

WILLIAM J. MILLS,
Chief Justice, etc.

209 TERRITORY OF NEW MEXICO, } ss:
County of Santa Fé,

Supreme Court.

I, the undersigned, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the foregoing 208 pages contain a full and complete transcript of the records and proceedings, pleadings, and statement of facts filed in the above-entitled cause, which is transmitted to the Supreme Court of the United States in accordance with an appeal herein granted by the supreme court of the Territory of New Mexico.

Witness my hand and the seal of the supreme court of the Territory of New Mexico this 22nd day of March, A. D. 1900.

[Seal of the Supreme Court, Territory of New Mexico.]

JOSE D. SENA,
Clerk of the Supreme Court of the Territory of New Mexico.

210 UNITED STATES OF AMERICA, ss:

To Justo R. Armijo, Greeting:

You are hereby commanded, cited, and admonished to be and appear at a Supreme Court of the United States, at Washington, within sixty days from the date hereof, pursuant to an appeal taken from the supreme court of the Territory of New Mexico, wherein Barbara Chaves de Armijo was plaintiff in error and appellant and you were defendant in error and appellee, to show cause, if any there be, why the judgment rendered against said appellant and plaintiff in error, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 22nd day of March, in the year of our Lord one thousand nine hundred.

[Seal of the Supreme Court, Territory of New Mexico.]

WILLIAM J. MILLS,
Chief Justice of the Supreme Court of the Territory of New Mexico.

On this 27 day of March, in the year of our Lord one thousand nine hundred, personally appeared A. B. Gillett before me, the subscribed notary public, and *makes* oath that he delivered a true copy of the within citation to Justo R. Armijo.

S. B. GILLETT.

Sworn to and subscribed the 27 day of March, A. D. 1900.

[Seal of Felix H. Lester, Notary Public, Bernalillo Co., N. M.]

FELIX H. LESTER,
Notary Public.

211 In the Supreme Court of the United States.

BARBARA CHAVES DE ARMIJO, Appellant,
vs.
JUSTO R. ARMIJO, Appellee.

Appeal from the supreme court of the Territory of New Mexico.

Assignment of Errors.

The said supreme court of the Territory of New Mexico erred in the following particulars:

1. The court erred in dismissing the appeal and writ of error of the appellant herein from the district court of the second judicial district of said Territory, on motion of the appellee, without hearing this cause on the merits.

2. The court erred in dismissing said appeal and writ of error on the motion of appellee and affirming the judgment of the said district court for the reasons set out in said motion.

3. The court erred in dismissing said appeal and writ of error and affirming the judgment of the said district court for the reasons set forth by the court in its said action and decision.

4. The court erred in dismissing said appeal and writ of error and affirming the judgment of said district court, for the reason that the transcript of the record showed that a motion for a new trial had not been filed in said district court.

5. The court erred in refusing to make findings of fact on which it based its action in dismissing said appeal and writ of error.

6. The court erred in inspecting the transcript of the record in this cause for the purpose of ascertaining that a motion for a new trial had not been filed in said cause and at the same time refusing to inspect said transcript to consider and adjudge the whole case on its merits.

212 Wherefore this appellant humbly prays this honorable court that the action and decision of said supreme court of the Territory of New Mexico may be reversed and this cause remanded, with such instructions as may be meet and proper.

H. L. WARREN,
Attorney for Appellant.

(Endorsed:) 840, 847. Supreme Court of the United States. Barbara Chaves de Armijo, appellant, *vs.* Justo R. Armijo, appellee. Assignment of errors. H. L. Warren, att'y for appellant.

(Endorsed:) File No., 17,706. New Mexico Territory supreme court. Term No., 592. Barbara Chavez de Armijo, appellant, *vs.* Justo R. Armijo. Filed April 6th, 1900.